

S.B.Criminal Revision Petition No.1079/2006

Amara Ram & Ors.
V.
State of Rajasthan & Anr.

Date of Order :: 5th December, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Choudhary, for the petitioners.
Mr. O.P.Rathi, Public Prosecutor.

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On basis of a complaint forwarded by Judicial Magistrate, Jalore for investigation, a case was registered at Police Station Sayla contemplating offences under Sections 147, 148, 447, 379 and 545 IPC against eight persons including the present petitioners, however, only three persons were charge-sheeted for the offences punishable under Sections 457 and 427 IPC. After examination of eight prosecution witnesses an application as per the provisions of Section 319 Cr.P.C. was preferred to summon and proceed against the petitioners with trial. The application aforesaid came to be rejected by an order dated 8.8.2005 passed by learned Judicial Magistrate, Ist Class, Jalore but the Sessions Judge, Jalore by order impugned dated 15.9.2006 quashed the order dated 8.8.2005 with a direction to the trial court to proceed further after taking cognizance of the offences against the petitioners.

while assailing validity, propriety and correctness of the order passed by learned Sessions Judge the contention advanced is that there is no reasonable prospect of the case against the petitioners ending in their conviction for the offences concerned, thus, learned Sessions Judge erred while quashing the order passed by learned Magistrate and making direction to take cognizance and summon the petitioners for trial.

The law threshed by Hon'ble Supreme Court on the point in question through its various pronouncements [1983(1) SCC 1, Municipal Corporation, Delhi v. R.K.Rodhi & Ors.; 2000(3) SCC 262, Michel Machhado and Ors v. Central Bureau of Intelligence & Ors.; and 2004(7) SCC 792, Krishanappa v. State of Karnataka], leads us to following conclusions:-

(1)the power available under Section 319 Cr.P.C. is extra ordinary power and such power must not be exercised mechanically;

(2)the Court must not add a person as an accused unless having hope that a reasonable prospect exists for conviction of the person concerned for the offence alleged;

(3)on basis of available evidence it should appear to the Court that some other person who is not arraigned as an accused could as well be tried alongwith already arraigned accused; and

(4) the Court while exercising power under Section 319 Cr.P.C. may not enter into deep merits of the matter but must ensure that innocent person may not be prosecuted, hence mere a lurking doubt from the evidence about involvement of a person is not sufficient to add and try him.

In the instant matter the petitioners were named in the complaint but no charge sheet was submitted against them, however, on being named by the complainant PW-2 the application was submitted to add the petitioners as accused. The involvement of the petitioners was also pointed out by PW-3 Ismile and PW-7 Shri Sher Mohd., but the learned Magistrate on basis of the material available held that no preference could be given to chance witnesses (PW-3 and PW-7) vis-a-vis the eye witnesses viz. Narsaram, Malaram and Jhalaram who were declared hostile. The Magistrate also found that the application under Section 319 Cr.P.C. was preferred at the fag end of the trial. A definite opinion on basis of material available on record was formed by the Magistrate that there was no, even remote likelihood of conviction of the persons sought to be summoned as accused.

The order passed by learned Magistrate was reversed by learned Sessions Judge in view of the fact that four prosecution witnesses including the complainant and his wife stated about involvement of the present petitioners in the offences.

Examining the matter on basis of the criteria determined to exercise power under Section 319 Cr.P.C., I am of the considered opinion that mere naming of the petitioners by some of the witnesses is not sufficient to add them as accused and to call for facing trial. Learned Sessions Judge should have examined the entire material available to arrive at the satisfaction about possibility and likelihood of the conviction. The naming of the petitioners by some witnesses may create a little doubt about their involvement in the offences, but that only is not sufficient to exercise powers under Section 319 Cr.P.C. Learned Magistrate while rejecting the application not only considered the statements given by the complainant, his wife, Sher Mohd. and Ismile, but also the statements of the eye witnesses and reached at the conclusion that there was no chance of conviction of the present petitioners. On the other hand, learned Sessions Judge only on basis of the statements of the complainant and some chance witnesses held that a prima facie case is available against the petitioners. While exercising powers under Section 319 Cr.P.C. mere availability of prima facie case is not adequate, hence the order impugned is not sustainable.

Accordingly, this revision petition is allowed and the order impugned dated 15.9.2006 passed by learned Sessions Judge, Jalore is quashed.

(GOVIND MATHUR),J.

kkm/ps.